IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2533 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHURIBEN W/O MOTIBHAI BHURIYA

Versus

LALARAM NARANSINH THAKUR (DELETED)

Appearance:

1. First Appeal No. 2533 of 2003

MR MTM HAKIM for Appellant

DELETED for Respondent No. 1

SERVED BY AFFIX.(N) for Respondent No. 2

MR HEMANT S SHAH for Respondent No. 3

NOTICE SERVED for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 27/04/2005

ORAL JUDGEMENT

1. ADMITTED.

Mr. Hemant S. Shah, learned advocate appears and waives service of notice of admission on behalf of respondent No.3.

2. Since the sole question raised in this appeal is in a very narrow compass as to whether the Motor Accident Claims Tribunal was justified in not awarding interest on the amount of compensation awarded under the head of dependency benefit from the date of filing of the application till its realisation to the appellant for the death of her minor son and as Mr. MTM Hakim, learned advocate of the appellant, does not press the appeal qua not awarding the full amount of claim made in the claim petition before the Tribunal and has confined the challenge in this appeal to the extent of not awarding interest, on the amount of compensation awarded under the head of dependency benefit, at the rate of 9% per annum from the date of filing of the application till its realisation, with the consent of the learned advocates appearing for the parties, the appeal is taken up for final hearing today and is disposed of by this judgment.

3. Instant appeal under Section 173 of the Motor Vehicles Act ('the Act' for short) is directed against the judgment and award dated 29.12.2001 rendered in MACP No.1157 of 1988 by the MACT (Aux.) Panchmahals at Godhra by which the claim petition filed by the appellant ('claimant' for short) against the respondents (the owner and insurer of the vehicle involved in the accident) to receive compensation of Rs. 1 lac on account of untimely demise of her minor son named Mahesh in a vehicular accident came to be partly allowed and the owner and insurer of the offending vehicle were directed to pay to the claimant a total sum of Rs.89,500/- by way of total compensation out of which Rs.17,500/- were awarded together with interest at the rate of 9% per annum from the date of filing of the application till its realization whereas Rs.72,000/- were awarded together with interest at the rate of 9% per annum from the date of the order till its realization.

4. Mr. MTM Hakim, learned advocate of the claimant, has submitted that the claimant does not press this appeal qua not awarding the full amount of claim made in the claim petition before the Tribunal and confines this appeal only to the point of not awarding interest at the rate of 9% per annum from the date of filing of the application till its realization on the amount of Rs.72,000/- awarded by the Tribunal under the head of dependency benefit. He has submitted that the Tribunal has erred in not awarding interest on the entire awarded amount from the date of the application till its realization (i.e., the Tribunal has not awarded interest at the rate of 9% per annum from the date of application till its realization on the amount of Rs.72,000/- which

were awarded under the head of dependency benefits). According to him, the Tribunal has committed an error in separating the awarded amount under two different heads for the purpose of awarding interest. According to him, the Tribunal ought to have awarded interest at the rate of 9% per annum from the date of filing of application till its realisation on the entire awarded amount.

(i) In support of the aforesaid contention, Mr. Hakim has relied upon a judgment of a Division Bench of this Court in the case of Kalubhai @ Chandubhai Kehlabhai Nayaka and another v. Phoolsinh Pratapsinh Rajput and others, reported in 2003 (1) GLR 853.

(ii) On aforesaid premises he urged that the impugned award deserves to be modified by granting interest on the amount of Rs.72,000/- also at the rate of 9% from the date of filing of the application till its realization instead of awarding interest at the rate of 9% from the date of the order till its realization as directed by the Tribunal.

5. Mr. Hemant S. Shah, learned advocate of respondent No.3, states that in view of the reported decision of the Division Bench of this Court in Kalubhai's case (supra), appropriate orders as deemed just and proper may be passed by this Court.

6. This Court has considered the submissions advanced by the learned advocates appearing for the parties, perused the impugned award and the judgment cited at the bar.

7. The only question which calls for determination of this court in this appeal is as to whether the Tribunal was justified in not awarding interest on the amount awarded under the head of dependency benefits to the claimant for the death of her minor son from the date of filing of the application till its realization?

8. In this connection, it would be appropriate to refer to the judgment of the Division Bench of this Court in Kalubhai's case (supra). In the said judgment, this Court has held that merely because the said amount would have been received by the claimant in future if the deceased boy would have survived, cannot be considered to be a ground for denying legal right of receiving interest upon the amount of compensation. Applying the principle laid down by the Division Bench of this Court in above referred to judgment to the facts of the present case, according to this Court, the Tribunal has committed a

grave error in not granting interest from the date of filing of the application till its realisation on the total amount of compensation awarded to the claimant.

9. It may be noted that the Tribunal has awarded total amount of Rs.89,500/- by way of compensation to the claimant but it has bifurcated the amount of Rs.89,500/= in two separate heads i.e., the first head consists of loss of expectation of life and funeral expenses and the Tribunal has awarded compensation of Rs.17,500/= with interest at the rate of 9% per annum from the date of filing of the application till its realisation whereas under the second head which consists of loss of dependency benefits, the Tribunal has awarded an amount of Rs.72,000/= but interest at the rate of 9% per annum from the date of the order till its realization was awarded and not from the date of filing of the application till its realization. According to this Court, the Tribunal ought not to have bifurcated the amount of compensation awarded by it for the purpose of awarding interest.

10. Seen in the above context and in view of the judgment of the Division Bench of this Court in Kalubhai's case (supra), the claimant is entitled to receive interest on the total amount of compensation awarded and therefore the impugned award is required to be modified by granting interest at the rate of 9% per annum on the total amount of compensation from the date of filing of the application till its realization by allowing this appeal.

11. For the foregoing reasons, the appeal succeeds and accordingly it is allowed with no order as to costs. The impugned judgment and award dated 29.12.2001 rendered in MACP No.1157 of 1988 by the MACT (Aux.) Panchmahals at Godhra qua granting interest on the amount of Rs.72,500/= which were awarded to the claimant under the head of dependency benefit at the rate of 9% per annum from the date of the order till its realisation is modified and it is hereby held that the claimant is entitled to receive interest at the rate of 9% per annum from the date of filing of the application till its realisation on the amount of Rs.72,000/- also. Resultantly, the claimant is entitled to receive the total amount of compensation of Rs.89,500/- as awarded by the Tribunal with interest at the rate of 9% per annum from the date of the filing of the application till its realization. Respondent Nos.2 and 3, jointly and severally, are directed to pay the awarded amount as per the modified award to the claimant.

12. Modified decree to be drawn up accordingly.

(A.M. Kapadia, J.)

(karan)